IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No. 66 of 2002.

Judgement reserved on : 25.6.2006.

Date of decision: 23.7.2007.

Smt. Kamla Kumari & ors. ….. Appellants.

Vs.

Binwa Transport Co-operative Society & anr. …. Respondents.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Appellants : Mr. Dharamvir Sharma, Advocate.

For the Respondents : Mr. K.D.Sood, Advocate, for respondent No. 2.

Kuldip Singh, Judge.

The petitioners- claimants are in appeal against the award, dated 20.7.2000, passed by Motor Accident Claims Tribunal, Mandi, in Claim Petition No. 93 of 1996, whereby an award of Rs. 4,42,000/- inclusive of amount, if any, received under no fault liability, alongwith 12% interest per annum from the date of filing of the petition, i.e. 28.10.1996, has been passed in favour of the petitioners-claimants and against respondent No.2 insurer. The appeal has been filed by petitioners- claimants for enhancement of compensation.

2. The brief facts are that petitioners- claimants are the widow, daughters and son of Kewal Krishan, who met with a fatal

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Whether the reporters of the local papers may be allowed to see the Judgment?

accident on 26.5.1996 while travelling in bus HP-37-3672 owned by respondent No.1 and insured with respondent No.2. It is alleged that deceased boarded ill-fated bus HP-37-3672 alongwith his daughter Kanchan Kumari from Chamba to Banikhet. The bus rolled down due to rash and negligent driving of its driver Jaswant Singh. In the accident 20 passengers including the driver died on the spot. Kewal Krishan also sustained injuries in the accident and died. The deceased was working as Senior Foreman in Chamera Hydroelectric Project. The deceased was 52 years of age at the time of accident. In addition to his salary, he was earning Rs. 1000/- per month from agriculture. The petitioners- claimants were dependant on the deceased. They filed petition claiming Rs. 7,00,000/- compensation on account of death of Kewal Krishan.

3. The respondent No.1 filed reply and contested the petition. It was admitted that many passengers died in the accident on the spot. The cause of the accident, as pleaded, was mechanical fault and not the rash and negligent driving on the part of Jaswant Singh driver. The original documents including the driving licence possessed by the driver were lost in the accident.

4. The respondent No.2 insurer has pleaded that vehicle was being driven in breach of the terms and condition of the policy. The negligence on the part of the driver at the time of accident was also disputed. The Tribunal held that accident took place due to rash and negligent driving on the part of the driver of the bus at the time of the accident. The insurer was held liable to satisfy the award and ultimately an award of Rs. 4,42,000/- was passed in favour of the

petitioners- claimants and against the insurer, as noticed above. The award against respondents has become final.

5. I have heard the learned counsel for the parties and have also gone through the record.

6. The learned counsel for the petitioners- claimants has submitted that the Tribunal has erred in not relying Ex. PW 3/A certificate dated 27.3.1999, regarding the salary of the deceased. The dependency of the petitioners- claimants Rs. 6000/- per month, has been taken on the lower side. The conventional amount of Rs. 10,000/-, has been awarded on the lower side. The learned counsel for respondent No. 2, has supported the impugned award.

7. The petitioners- claimants No. 1, 3, 4 and 5 are major as per extract of Parivar register Ex. PW 4/A. No specific evidence has come regarding the age of the petitioner- claimant No. 2 Suman Kumari, but in the statement of PW 5 Smt. Kamla, it has come that her daughter Suman Kumari was married when she made the statement before the Tribunal on 22.9.1999. Therefore, it can be safely inferred that petitioner- claimant No.2 Suman Kumari was also major when accident took place. PW 3 R.C.Parmar, Assistant Administrative Officer, Chamera Hydroelectric Project has proved Ex. PW 3/A salary certificate of deceased Kewal Krishan. He has stated that certificate Ex. PW 3/A is correct, signed and issued by him as per record. In cross-examination, he has further stated that he was authorized to issue the certificate. The salary was enhanced with effect from 1.1.1996 and salary certificate Ex. PW 3/A, is based upon increased salary. The accident took place on 26.5.1996. The Tribunal

below has not relied the salary certificate on the ground that record on the basis of which certificate was prepared, was not produced by the witness at the time of his statement. Chamera Hydroelectric Project is a Unit of National Hydroelectric Power Corporation, a public sector undertaking. PW 3 R.C.Parmar, Assistant Administrative Officer of Chamera Hydroelectric Project, has proved salary certificate Ex. PW 3/A, nothing has been placed on record to show that salary certificate Ex. PW 3/A is not correct. In these circumstances, there is no reason to disbelieve the salary certificate Ex. PW 3/A.

8. The perusal of salary certificate Ex. PW 3/A would show that deceased Kewal Krishan was drawing Rs. 8940/-, and as per statement of PW 3, Rs.8940/- was the salary of deceased on 1.1.1996. No statutory deduction has been shown in salary certificate Ex. PW 3/A. The petitioners- claimants were major, applying the unit system, the deceased must be spending on himself about Rs. 1500/- per month, and therefore, the dependency of petitioners-claimants comes (Rs. 8940-1500) = Rs.7440/- per month. The annual dependency of the petitioners comes Rs. 7440 x 12 = Rs. 89,280/-. The deceased was 52 years of age at the time of death, therefore, 6 is appropriate multiplier in the present case. The petitioners- claimants are thus entitled to compensation of Rs. 7440 x 12 x 6= Rs. 5,35,680/-, on account of death of Kewal Krishan. The petitioners- claimants are also entitled to Rs. 15,000/- on account of loss of consortium, love and affection due to the death of Kewal Krishan. The petitioners- claimants are also entitled to lump sum amount of Rs. 5000/- on account of funeral expenses and

performing the last rites of the deceased. Thus, the petitioners-claimants are entitled to total compensation of Rs. 535680 + Rs.15000 + Rs. 5000 = Rs. 5,55,680/- inclusive of the amount, if any, awarded to them under no fault liability. The petitioners- claimants are entitled to interest at the rate of 9% per annum on Rs. 5,55,680/- from the date of filing of the petition i.e. 28.10.1996, till payment/ deposit. The award amount of Rs. 5,55,680/- alongwith interest shall be payable by respondent No.2 insurer to the petitioners- claimants. The apportionment of the amount of compensation in the ratio of 40:10:10:20:20 amongst the petitioners- claimants held by Tribunal is confirmed.

9. The result of the above discussion is that the impugned award is modified, an award of Rs. 5,55,680/- is passed in favour of the petitioners- claimants inclusive of the amount, if any, awarded to the petitioners- claimants under no fault liability. The petitioners-claimants on Rs. 5,55,680/-, shall also be entitled to interest at the rate of 9% per annum from the date of filing of the petition, i.e. 28.10.1996 till payment/ deposit. The award amount of Rs. 5,55,680/- alongwith interest at the rate of 9% per annum shall be payable by respondent No. 2 insurer to the petitioners- claimants. The compensation awarded to the petitioners- claimants shall be apportioned amongst the petitioners- claimants in the ratio of 40:10:10:20:20, respectively. No costs.

July 23, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**